

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BOBBY BOYD,)
)
Plaintiff,)
)
) No. CIV-16-708-W
v.)
)
BERNALILLO COUNTY DETENTION)
CENTER,)
)
Defendant.)

REPORT AND RECOMMENDATION

Plaintiff, a New Mexico state pretrial detainee appearing *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On June 23, 2016, the matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B).

On July 11, 2016, Plaintiff was advised in an Order to Plaintiff to Cure Deficiency (Doc. # 5) that his initial documents were deficient in that he had not submitted an *in forma pauperis* application or paid the filing fee. The Clerk of the Court was directed to mail to Plaintiff by regular mail the appropriate forms, and Plaintiff was directed to cure the designated deficiencies by July 29, 2016.¹ Plaintiff was also advised that failure to comply with the Order would result in a recommendation that the action be dismissed without

¹The Court's docket in this case reflects that the forms were indeed mailed to Plaintiff on July 11, 2016, at his last known address.

prejudice and without further notice.

To this date, Plaintiff has not complied with the Court's Order. He has not complied with the Court's Order by either paying the filing fee or submitting an *in forma pauperis* application. Nor has he requested an extension of time to comply with the Court's Order. Instead, Plaintiff has submitted numerous letters to the Court that do not address his failure to pay the filing fee or present the required *in forma pauperis* application forms.

The undersigned finds that Plaintiff's failure to comply with this Court's Order, together with the Court's right and responsibility to manage and control its case load, warrants dismissal of this action without prejudice. See Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(noting the court applies Fed. R. Civ. P. 41(b) to allow *sua sponte* dismissal for "failure to . . . comply with the rules of civil procedure or court's orders").

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action be DISMISSED without prejudice due to his failure to comply with the Court's Order. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by August 21st, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first

time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 1st day of August, 2016.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE